

**ORIGINAL FILED**

JUL 12 2004

LARRY W. PROPPS, CLERK  
COLUMBIA, S.C.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

Powers Printing Company, Inc.,	)	Civil Action No. 3:04CV1792-22
	)	
Plaintiff,	)	
	)	
vs.	)	<b><u>ANSWER AND COUNTERCLAIM OF</u></b>
	)	<b><u>DEFENDANT XPEDX</u></b>
AGFA Corporation and XPEDX,	)	<b>(JURY TRIAL REQUESTED)</b>
	)	
Defendants.	)	
	)	

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The Defendant, xpedx<sup>1</sup>, answering the Plaintiff's Complaint and denying each and every allegation of the Complaint not specifically admitted or qualified herein, states the following:

1. [X]pedx admits, upon information and belief, the allegations in paragraph one of the Complaint.
2. [X]pedx is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph two of the Complaint, and therefore, denies the same and demands strict proof thereof.
3. Answering paragraph three, xpedx admits that it conducts business and has agents in South Carolina, including Richland County, but except as is specifically admitted hereinabove, each and every allegation in said paragraph is expressly denied.
4. The allegations in paragraph four call for a legal conclusion to which no response is required. To the extent a response is required, the allegations contained therein are denied.

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<sup>1</sup> Defendant xpedx's proper registered name is all lowercase letters.

**FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION**

5. Answering paragraph five of the Complaint, xpedx admits that in the summer of 2002, it provided the plaintiff with literature and information concerning AGFA's product line of proofing and plate making equipment, but except as is specifically admitted hereinabove, each and every allegation in said paragraph is expressly denied.
6. Answering paragraph six of the Complaint, xpedx admits that its employees met with Powers' employees and AGFA's employees on several occasions concerning AGFA's proofing and plate making equipment. [X]pedx denies the remaining allegations contained therein in so much as much as the allegations are directed to xpedx.
7. [X]pedx denies the allegations in paragraph seven of the Complaint in so much as the allegations are directed to xpedx.
8. [X]pedx denies the allegations in paragraph eight of the Complaint in so much as the allegations are directed to xpedx.
9. [X]pedx denies the allegations in paragraph nine of the Complaint in so much as the allegations are directed to xpedx.
10. [X]pedx denies the allegations in paragraph ten of the Complaint in so much as the allegations are directed to xpedx.
11. [X]pedx denies the allegations in paragraph eleven of the Complaint in so much as the allegations are directed to xpedx.

**FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION**

12. Answering paragraph twelve of the Complaint, xpedx realleges its responses in paragraphs one through eleven as fully and effectively as if restated verbatim.

13. Answering paragraph thirteen of the Complaint, xpedx craves reference to the terms and conditions of the contract entered into between xpedx and the Plaintiff and any allegation inconsistent therewith is denied. Except as is specifically admitted hereinabove, each and every allegation in said paragraph is expressly denied.
14. [X]pedx denies the allegations in paragraph fourteen of the Complaint.

**FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION**

15. Answering paragraph fifteen of the Complaint, xpedx realleges its responses in paragraph one through fourteen as fully and effectively as if restated verbatim.
16. [X]pedx denies the allegations in paragraph sixteen of the Complaint in so much as the allegations are directed to xpedx.
17. Except as is specifically admitted hereinabove, each and every allegation in the entire Complaint is expressly denied.

**FOR A SECOND DEFENSE**

18. [X]pedx would show that Plaintiff fails to state a claim upon which relief can be granted and therefore, plaintiff's Complaint against xpedx should be dismissed.

**FOR A THIRD DEFENSE**

19. Plaintiff's claims for non-economic damages, if any, are barred by the economic loss rule.

**FOR A FOURTH DEFENSE**

20. One or more of Plaintiff's claims are barred by waiver and/or estoppel.

**FOR A FIFTH DEFENSE**

21. Any damages allegedly sustained by Plaintiff, which are expressly denied, were caused by the acts or omissions of entities or persons other than xpedx, which acts or

omissions constitute the intervening and superceding causes of Plaintiff's alleged damages.

**FOR A SIXTH DEFENSE**

22. Any injuries or damages sustained by the Plaintiff arising out of the incidents referred in the Complaint resulted solely from the acts and omission of a third party or parties over whom xpedx had no control and by reason of which xpedx is not liable to the Plaintiff.

**FOR A SEVENTH DEFENSE**

23. [X]pedx would show that Plaintiff failed to satisfy a condition precedent under the contract, and therefore, its claims must be dismissed.

**FOR AN EIGHTH DEFENSE**

24. [X]pedx would show that Plaintiff failed to perform its obligations under the contract and therefore, its claims must be dismissed.

**FOR A NINTH DEFENSE**

25. The claims against xpedx are barred or diminished by the doctrine of comparative negligence.

**FOR A TENTH DEFENSE**

26. All statements made by xpedx were made in good faith, were true at the time made, or were statements of opinion.

**FOR AN ELEVENTH DEFENSE**

27. Plaintiff's rights and remedies are limited by contract, purchase agreement and terms of sale. Any recovery of damages beyond those permitted in the documents referenced

herein are barred. These limitations include, but are not limited to, the exclusion of Plaintiff's right to recover consequential damages.

**FOR A TWELFTH DEFENSE**

28. Plaintiff has failed to mitigate damages as required by law

**FOR A THIRTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM**

29. [X]pedx is a division of International Paper and does business in the State of South Carolina, including Richland County.

30. Powers Printing Company, Inc. (hereinafter "Powers") is a corporation organized under the laws of the State of South Carolina and does business in Richland County.

31. This claim is a permissive counterclaim against Powers, which provides this court with jurisdiction over the matter pursuant to § 28 USC 1367.

32. From September of 2003, through May of 2004, xpedx sold goods to Powers. Powers took delivery of those goods and agreed to pay xpedx for the goods provided. A printout reflecting the dates the goods were delivered and the amounts for those goods is attached hereto and incorporated as Exhibit "A."

33. Powers owes xpedx \$101,725.93 for the goods delivered, plus interest, which is accruing at the statutory rate.

Wherefore, xpedx demands judgment against Powers for the sum of \$101,725.93, plus interest and costs; prays that Plaintiff's claims against it be dismissed, with

prejudice and for such other and further relief as the Court deems just and proper.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

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Columbia, SC 29201  
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Attorneys for xpedx

Columbia, South Carolina

7/12, 2004

## **EXHIBIT A**



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2930 Whitehorse Rd  
Greenville SC 29611

Date : 06/14/2004

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**Payer:**

POWERS PRINTING  
PO BOX 5108  
SPARTANBURG SC 29304  
UNITED STATES

Account with us : 102174/IP06  
Contact : Rita Brazeal

Rita.Brazeal@ipaper.com

**Account statement as of 06/14/2004**

Branch Number	Invoice Number	Purchase Order	Invoice Date	Days Past Due	Disc Due Date	Invoice Amount	Curr	Post Key
102174	220N358219	030733-57400	09/30/2003	183		1,090.90	USD	01
102174	220N358372	030731	09/30/2003	183		862.77	USD	01
102174	220N358655	030736	10/02/2003	181		495.85	USD	01
102174	220N358854	030737	10/03/2003	180		379.92	USD	01
102174	220N359042	030739	10/03/2003	180		689.33	USD	01
102174	220N359215	1	10/07/2003	176		326.43	USD	01
102174	220N359478	030744	10/07/2003	176		465.08	USD	01
102174	220N359987	030731	10/10/2003	173		260.81	USD	01
102174	220N360106	030750	10/13/2003	170		303.59	USD	01
102174	220N360107	030750	10/13/2003	170		236.27	USD	01
102174	220N360144	030752-57400	10/13/2003	170		595.69	USD	01
102174	220N360466	030754	10/14/2003	169		275.83	USD	01
102174	220N360536	030754	10/15/2003	168		147.39	USD	01
102174	220N360716	030747	10/15/2003	168		574.19	USD	01
102174	220N360839	030748	10/16/2003	167		161.92	USD	01
102174	220N360840	030747	10/16/2003	167		177.00	USD	01
102174	220T521364	DAVID	10/16/2003	167		44.50	USD	01





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Branch Number	Invoice Number	Purchase Order	Invoice Date	Days Past Due	Disc Due Date	Invoice Amount \$	Curr	Post Key
102174	220B914907	030754	10/17/2003	166		152.91	USD	01
102174	220N360913	030748	10/17/2003	166		30.40	USD	01
102174	220N360975	030747	10/17/2003	166		226.46	USD	01
102174	220N361023	030754	10/17/2003	166		2.61	USD	01
102174	220N361030	030758	10/17/2003	166		1,242.29	USD	01
102174	220N361127	030760-57400	10/20/2003	163		1,374.75	USD	01
102174	220N361409	030759	10/21/2003	162		92.29	USD	01
102174	220N361452	030762	10/21/2003	162		647.04	USD	01
102174	220N361692	030764	10/22/2003	161		40.50	USD	01
102174	220D722347	030731	10/23/2003	160		85.23	USD	01
102174	220N361625	030764	10/23/2003	160		691.24	USD	01
102174	220N361867	030768	10/23/2003	160		189.22	USD	01
102174	220N361965	030768	10/24/2003	159		15.46	USD	01
102174	220N362046	030770	10/27/2003	156		875.16	USD	01
102174	220N362171	030773	10/27/2003	156		69.54	USD	01
102174	220N362248	030774	10/27/2003	156		41.46	USD	01
102174	220N362466	030777	10/28/2003	155		76.46	USD	01
102174	220N362777	030780	10/30/2003	153		21.52	USD	01
102174	220N362806	030785	10/30/2003	153		53.95	USD	01
102174	220T522142	030780	10/30/2003	153		24.00	USD	01
102174	220T522206	030785	10/30/2003	153		53.80	USD	01
102174	220T522330	030786	10/30/2003	153		1,521.33	USD	01
102174	220T522334	030786	10/30/2003	153		474.68	USD	01
102174	220T522335	030786	10/30/2003	153		859.62	USD	01
102174	050N363297	030787	11/03/2003	149		25.94	USD	01
102174	220N363079	030786	11/03/2003	149		71.10	USD	01
102174	220N363295	030793	11/04/2003	148		604.50	USD	01
102174	220R894536	030686	11/04/2003	148		627.50-	USD	11
102174	220R894537	030676	11/04/2003	148		134.88-	USD	11
102174	220N363443	030793	11/05/2003	147		208.69	USD	01
102174	220N363450	030795	11/05/2003	147		45.29	USD	01
102174	220N363618	030798	11/05/2003	147		262.63	USD	01
102174	220N364004	030807	11/07/2003	145		63.97	USD	01
102174	220N364049	030807	11/07/2003	145		368.77	USD	01
102174	220N363850	030802	11/10/2003	142		652.33	USD	01
102174	220N364161	030812-57400	11/10/2003	142		807.08	USD	01
102174	220N364194	030810	11/10/2003	142		92.18	USD	01
102174	220N364616	030817-57400	11/12/2003	140		803.84	USD	01



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Branch Number	Invoice Number	Purchase Order	Invoice Date	Days Past Due	Disc Due Date	Invoice Amount ¢	Curr	Post Key
102174	220D723086	030786	11/13/2003	139		54.58	USD	01
102174	220N364907	030821	11/17/2003	135		562.72	USD	01
102174	220N365010	030826	11/17/2003	135		4,541.88	USD	01
102174	220N365260	030832	11/17/2003	135		85.41	USD	01
102174	220N365390	030835-57400	11/18/2003	134		208.69	USD	01
102174	220N365409	030833	11/18/2003	134		3,044.42	USD	01
102174	220T523281	030835-57400	11/18/2003	134		610.48	USD	01
102174	220N365617	030838	11/19/2003	133		214.64	USD	01
102174	220T523349	030836	11/19/2003	133		32.05	USD	01
102174	220N365876	030843	11/20/2003	132		355.73	USD	01
102174	220D723187	030821	11/21/2003	131		15.18	USD	01
102174	220N365873	030841	11/21/2003	131		4,616.65	USD	01
102174	220N366020	030846-57400	11/21/2003	131		882.75	USD	01
102174	220N366096	030841	11/21/2003	131		72.55	USD	01
102174	220N366097	030845	11/21/2003	131		64.45	USD	01
102174	220T523388	030838	11/21/2003	131		734.58	USD	01
102174	220N358372		11/24/2003	202		8.18-	USD	16
102174	220T517686		11/24/2003	202		37.74-	USD	16
102174	220N366527	030850	11/25/2003	127		672.80	USD	01
102174	220I9721	030843	11/26/2003	126		1,513.74	USD	01
102174	220N366456	030848	11/26/2003	126		370.72	USD	01
102174	220N366727	030855	11/26/2003	126		139.85	USD	01
102174	220N366838	030857-57400	12/01/2003	121		676.77	USD	01
102174	220N366888	DAVID/VERBAL	12/01/2003	121		132.61	USD	01
102174	220R894624	030841, N365873	12/01/2003	121		77.55-	USD	11
102174	220N367029	030863	12/02/2003	120		151.53	USD	01
102174	220N367210	030867	12/03/2003	119		470.19	USD	01
102174	220N367362	030867	12/04/2003	118		121.55	USD	01
102174	220N367609	030870-57400	12/05/2003	117		1,221.75	USD	01
102174	220N367663	030869	12/05/2003	117		68.26	USD	01
102174	050N367960	RENA	12/08/2003	114		35.00	USD	01
102174	220N367890	030873	12/08/2003	114		183.65	USD	01
102174	220N368030	030876	12/09/2003	113		166.96	USD	01
102174	220N368113	030876	12/09/2003	113		373.42	USD	01
102174	220N368121	030877	12/09/2003	113		1,090.90	USD	01
102174	220N368475	030878	12/11/2003	111		1,413.57	USD	01
102174	220I9763	030863	12/12/2003	110		2,018.32	USD	01
102174	220N368816	030881	12/15/2003	107		78.57	USD	01



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Branch Number	Invoice Number	Purchase Order	Invoice Date	Days Past Due	Disc Due Date	Invoice Amount	Curr	Post Key
102174	220N368818	030881	12/15/2003	107		718.72	USD	01
102174	220N369002	030881	12/15/2003	107		276.69	USD	01
102174	220I9634	030817-57400	12/16/2003	106		305.24	USD	01
102174	220N369155	030887	12/16/2003	106		799.04	USD	01
102174	220N369395	030889	12/17/2003	105		329.25	USD	01
102174	220N369763	030893	12/19/2003	103		199.98	USD	01
102174	220N370191	030900	12/24/2003	98		145.10	USD	01
102174	220N370306	030901	12/29/2003	93		175.44	USD	01
102174	220N370338	030903-57400	12/30/2003	92		495.75	USD	01
102174	220N370469	030904	12/30/2003	92		252.00	USD	01
102174	050N370720	DAVID	12/31/2003	91		25.34	USD	01
102174	220C860473	3RD QTR 2003 REBATE	12/31/2003	91		867.40-	USD	11
102174	220N370749	40001	01/05/2004	86		975.95	USD	01
102174	220N370758	DENISE	01/05/2004	86		81.96	USD	01
102174	220D723916	030894	01/06/2004	85		2,260.00	USD	01
102174	220N370951	40001	01/06/2004	85		41.55	USD	01
102174	220N370991	40008	01/06/2004	85		834.75	USD	01
102174	220N371020	40006	01/06/2004	85		277.20	USD	01
102174	220N371219	40010	01/07/2004	84		397.72	USD	01
102174	220N371517	40011	01/08/2004	83		151.74	USD	01
102174	220N371709	RENA	01/09/2004	82		99.20	USD	01
102174	220N371710	40015	01/09/2004	82		107.29	USD	01
102174	220N371910	40023	01/12/2004	79		36.23	USD	01
102174	220T526048	40015	01/13/2004	78		99.20	USD	01
102174	050D723895	40001	01/14/2004	77		99.84	USD	01
102174	050N372450	48033	01/14/2004	77		21.94	USD	01
102174	220N372233	40030	01/14/2004	77		861.45	USD	01
102174	220N372584	40036	01/15/2004	76		35.96	USD	01
102174	220N372873	40040	01/19/2004	72		679.84	USD	01
102174	220N372879	40039	01/19/2004	72		495.75	USD	01
102174	220T526529	40040	01/20/2004	71		336.00	USD	01
102174	220N373376	40059	01/21/2004	70		208.69	USD	01
102174	220N373636	40064	01/22/2004	69		60.79	USD	01
102174	220N373721	40066/57400	01/22/2004	69		834.75	USD	01
102174	9002444168	40001	01/27/2004	64		432.41	USD	01
102174	9002448637	40069	01/28/2004	63		42.84	USD	01
102174	9002448665	40070	01/28/2004	63		285.12	USD	01
102174	9002453887	40068	01/29/2004	62		171.65	USD	01



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102174	9002463338	40079	01/30/2004	61		31.26	USD	01
102174	9002471754	40088	02/03/2004	57		139.11	USD	01
102174	9002477077	40095	02/04/2004	56		460.12	USD	01
102174	9002481106	40092	02/05/2004	55		1,047.62	USD	01
102174	9002482640	40098	02/05/2004	55		111.60	USD	01
102174	9002486006	40088	02/06/2004	54		15.81	USD	01
102174	9002490982	40088	02/09/2004	51		69.18	USD	01
102174	9002496414	40109	02/10/2004	50		6.00	USD	01
102174	9002496443	40107-57400	02/10/2004	50		2,515.03	USD	01
102174	9002496452	40107-57400	02/10/2004	50		32.28	USD	01
102174	9002501716	40114	02/11/2004	49		36.53	USD	01
102174	9002506983	40115	02/12/2004	48		1,977.73	USD	01
102174	9002507019	40115	02/12/2004	48		272.39	USD	01
102174	9002511744	40120	02/13/2004	47		81.00	USD	01
102174	9002511778	40120	02/13/2004	47		92.82	USD	01
102174	9002511799	40120	02/13/2004	47		128.90	USD	01
102174	9002517052	40128	02/16/2004	44		30.39	USD	01
102174	9002526957	40100	02/18/2004	42		164.10	USD	01
102174	9002526961	SEE LINES	02/18/2004	42		84.08	USD	01
102174	9002527047	40104	02/18/2004	42		25.53	USD	01
102174	9002527053	40108	02/18/2004	42		2,447.44	USD	01
102174	9002527060	40107-57400	02/18/2004	42		145.10	USD	01
102174	9002527073	40109	02/18/2004	42		69.18	USD	01
102174	9002527095	40109	02/18/2004	42		240.15	USD	01
102174	9002527151	40115	02/18/2004	42		1,149.99	USD	01
102174	9002527168	40115	02/18/2004	42		44.40	USD	01
102174	9002527187	40115	02/18/2004	42		116.30	USD	01
102174	9002527363	40129	02/18/2004	42		136.84	USD	01
102174	9002527414	40131	02/18/2004	42		32.66	USD	01
102174	9002527462	40129	02/18/2004	42		59.64	USD	01
102174	9002528897	40107-57400	02/18/2004	42		96.67	USD	01
102174	9002528899	40107-57400	02/18/2004	42		387.36	USD	01
102174	9002532689	40133	02/19/2004	41		128.90	USD	01
102174	9002532750	40133	02/19/2004	41		68.42	USD	01
102174	9002537664	40136	02/20/2004	40		34.08	USD	01
102174	9002538952	40137	02/20/2004	40		322.25	USD	01
102174	9002542566	40137	02/23/2004	37		364.91	USD	01
102174	9002542605	40137	02/23/2004	37		1,551.08	USD	01



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Branch Number	Invoice Number	Purchase Order	Invoice Date	Days Past Due	Disc Due Date	Invoice Amount †	Curr	Post Key
102174	9002548150	40137	02/24/2004	36		46.72	USD	01
102174	9002548188	40141	02/24/2004	36		1,293.27	USD	01
102174	9002553554	40144	02/25/2004	35		13.70	USD	01
102174	9002553576	40144	02/25/2004	35		136.40	USD	01
102174	9002553591	40145/57400	02/25/2004	35		1,298.00	USD	01
102174	9002553603	40144	02/25/2004	35		4.70	USD	01
102174	050N374766	RENEE	03/01/2004	30		35.24	USD	01
102174	9002574007	RALPH	03/01/2004	30		1,537.60	USD	01
102174	9002578861	40149	03/02/2004	29		788.99	USD	01
102174	9002578878	40117	03/02/2004	29		373.04	USD	01
102174	9002578912	40150	03/02/2004	29		359.56	USD	01
102174	050D724227	40141	03/03/2004	28		71.00	USD	01
102174	9002589309	40117	03/04/2004	27		574.20	USD	01
102174	9002589317	40151	03/04/2004	27		79.18	USD	01
102174	9002589345	SUPPLIES	03/04/2004	27		447.00	USD	01
102174	9002591009	40151	03/04/2004	27		153.95	USD	01
102174	9002594769	40168	03/05/2004	26		136.84	USD	01
102174	9002594782	40168	03/05/2004	26		147.83	USD	01
102174	9002471754	4008	03/08/2004	23		47.34-	USD	11
102174	9002599479	40150	03/08/2004	23		560.04	USD	01
102174	9002599498	40168	03/08/2004	23		121.10	USD	01
102174	9002599519	40167	03/08/2004	23		139.23	USD	01
102174	9002610042	40171	03/10/2004	21		27.11	USD	01
102174	9002610083	40149	03/10/2004	21		206.71	USD	01
102174	9002619870	40181-57400	03/12/2004	19		2,788.94	USD	01
102174	9002619881	40178	03/12/2004	19		52.37	USD	01
102174	9002619888	40183	03/12/2004	19		2,700.18	USD	01
102174	9002619909	40183	03/12/2004	19		113.94	USD	01
102174	9002625153	40187	03/15/2004	16		168.54	USD	01
102174	9002625176	40187	03/15/2004	16		798.62	USD	01
102174	9002625222	40187	03/15/2004	16		1,115.94	USD	01
102174	9002630797	40187	03/16/2004	15		13.58	USD	01
102174	9002630812	40187	03/16/2004	15		3,635.88	USD	01
102174	9002636348	40191	03/17/2004	14		71.21	USD	01
102174	9002641771	40191	03/18/2004	13		142.42	USD	01
102174	9002641861	40199	03/18/2004	13		676.44	USD	01
102174	9002646925	40203	03/19/2004	12		492.46	USD	01
102174	9002646940	40203	03/19/2004	12		107.27	USD	01



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Date : 06/14/2004

Page : 7

Account with us : 102174

Branch Number	Invoice Number	Purchase Order	Invoice Date	Days Past Due	Disc Due Date	Invoice Amount t	Curr	Post Key
102174	9002646979	40206	03/19/2004	12		232.95	USD	01
102174	9002650531	40209	03/22/2004	9		99.62	USD	01
102174	9002650537	SUPPLIES	03/22/2004	9		39.38	USD	01
102174	9002667495	40219-57400	03/25/2004	6		1,926.34	USD	01
102174	9002667512	40215	03/25/2004	6		13.79	USD	01
102174	9002667519	40220	03/25/2004	6		1,213.71	USD	01
102174	9002667528	40199	03/25/2004	6		737.43	USD	01
102174	9002667512	40215	03/26/2004	5		36.75	USD	01
102174	9002684667	40181-57400	03/30/2004	1		515.95	USD	01
102174	9002684734	40219-57400	03/30/2004	1		692.90	USD	01
102174	160-440660	39171	05/19/2004	4-		844.10	USD	01
102174	160-440702	39171	05/24/2004	9-		422.55	USD	01

Balance for 102174 :

101,725.93 USD

Current	Past Due 1-30	Past Due 31-60	Past Due 61-90	Past Due 91 +
1,266.65	24,097.89	17,478.38	9,961.08	48,921.93

**PLEASE REMIT TO (NOT FOR CORRESPONDENCE)**

DEPT 0978  
P.O. Box 120978  
DALLAS , TX 75312-0978

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for xpedx, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

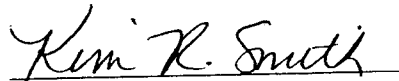
Answer and Counterclaim of Defendant xpedx

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Kim R. Smith  
Administrative Assistant

July 12, 2004